UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Docket no. 00-CR-53-B-S
DARREN JOHN HAWKINS,	)	
	)	
Defendant	)	

ORDER MODIFYING THE
MAGISTRATE JUDGE'S RECOMMENDED DECISION

SINGAL, District Judge

Before the Court is Defendant's Motion to Suppress Evidence (Docket #7), which the Magistrate Judge has recommended this Court deny. After a de novo review of the Magistrate's finding, the Court agrees with the Magistrate's determination that the Motion should be denied, but on different grounds. For the reasons discussed below, the Court DENIES Defendant's Motion.

I. FINDINGS OF FACT

On July 14, 2000, Officer Christopher Hashey of the Old Town Police Department was driving on Stillwater Avenue in Old Town while on routine patrol. At approximately 12:35 p.m. that day, Hashey observed a motorcycle operating erratically, proceeding towards Hashey in the opposite lane. The motorcycle's operator, Defendant, wore a helmet. Hashey made a u-turn, activated his emergency lights and pursued the motorcycle. Hashey approached the motorcycle, which had turned into the parking lot of a Dairy Queen restaurant. As Hashey entered the parking lot and turned off his emergency lights, the

motorcycle suddenly exited the parking lot and drove away at a high rate of speed, estimated to be in excess of 75 m.p.h.

Hashey reactivated his emergency lights, turned on his siren and resumed his chase after Defendant. Hashey momentarily lost sight of the motorcycle, but as the officer proceeded down the road, he observed that the motorcycle had collided with a semi-tractor trailer truck. The distance from the Dairy Queen to the truck was approximately one-quarter mile. Hashey observed that Defendant was lying unconscious, face-down on the pavement, partially under the motorcycle, which was, in turn, partially under the truck.

Hashey observed that Defendant was unresponsive and that his breathing was very shallow. Believing that Defendant was close to death, Hashey immobilized Defendant's neck and waited for help to arrive. An ambulance and five or six paramedics arrived on the scene. The paramedics and Hashey lifted the motorcycle off of Defendant. A paramedic employed by the Old Town Fire Department, Andrew Fish, determined that Defendant was nonresponsive and totally unconscious. The EMTs immobilized Defendant and placed him inside the ambulance. At some point, Defendant's helmet was removed and Hashey recognized him from more than one prior encounter with him. Sometime during this incident another police officer, Sergeant Hatch, arrived on the scene.

Once Defendant was in the ambulance, the paramedics began removing certain articles of clothing that were soaked with gasoline. While the ambulance's doors were still open, the paramedics cut open Defendant's trousers. Fish saw a transparent plastic baggie poking out of the sock on Defendant's right

leg. He observed that there was a leafy green substance in the baggie. From inside the ambulance, Fish called out to Hashey. As Hashey approached the ambulance, Fish directed the officer's attention to Defendant's right leg. Hashey quickly identified the green matter as marijuana. Hashey reached out and took custody of the bag of marijuana. Approximately three to four minutes after the ambulance arrived at the scene, it departed for the Eastern Maine Medical Center in Bangor. Several paramedics, but no police officers, rode in the ambulance with Defendant. The police did not escort the ambulance to the hospital.

Still at the accident scene, Hashey called the Old Town Police Department to ask that another officer be sent to the hospital to perform a blood analysis on Defendant to determine whether he should be charged for operating a vehicle while under the influence of alcohol. The Old Town Police Department dispatcher communicated with the Bangor Police Department dispatcher, who instructed Bangor Police Officer George Spencer, Jr. to go to the Eastern Maine Medical Center with a "blood kit" in order to perform a blood analysis.

En route to the hospital, Fish and other paramedics continued to remove Defendant's clothing, including a leather jacket. These articles of clothing ended up on the ambulance floor. When the ambulance arrived at the Eastern Maine Medical Center, hospital personnel transported Defendant to the emergency room. While inside the emergency room, Fish observed two knives that had been removed from Defendant's person. Once hospital staff had taken Defendant from the paramedics, Fish collected Defendant's clothing from the ambulance floor and placed them inside a "patient belonging bag." Pursuant to standard procedure,

paramedics place any personal belongings left in the ambulance in such a bag, and then convey the bag to hospital staff.

As Fish was picking up Defendant's things, he noticed that the cut-up leather jacket was unusually heavy. Examining the jacket, he observed half of a glass jar protruding from a jacket pocket. The transparent jar contained an opaque plastic bag, either black or brown in color. Suspecting that the suspiciously weighty jacket may contain another weapon, Fish decided that he ought to hand over the jacket to a police officer. Expecting that a police officer would be in the hospital, Fish entered the Eastern Maine Medical Center to find one.

Meanwhile, Officer Spencer already had arrived at the hospital, had parked his police cruiser near the emergency room entrance and had entered the emergency room. As medical personnel struggled to save Defendant's life, Spencer stood nearby. Fish entered the hospital and located Spencer, whom he had met once before. The two men walked towards the "EMT room," a small room set aside for paramedics and police officers to do their paperwork. (Tr. 22 l. 18.) Separated from the emergency room by closed doors, the EMT room is about thirty feet distant from the emergency room. Outside of the EMT room, Fish handed Spencer the jacket containing the jar. Inside the EMT room, Spencer removed all the contents of Defendant's jacket, which included the jar, an electronic scale and a black glove. The glass jar was about five or six inches tall, about three or four inches in diameter, partially covered by a peanut butter label, and topped with a yellow screw-on lid. Spencer opened the jar and reached inside. He felt the plastic bag, which was solid. On the current record, it is

unclear how much time passed between Hashey's encounter with Defendant and Spencer's search. Next, Spencer went to the hospital parking lot and deposited the items in the trunk of his police cruiser.

In the meantime, the Bangor Police Department sent to the hospital two agents from the Maine Drug Enforcement Agency ("MDEA"), Robert Hutchings and Mark Leonard. Hutchings was not only an agent of the MDEA, but also an officer in the Bangor Police Department. Leonard was also a police officer with the Veazie Police Department. Hutchings and Leonard soon encountered Spencer, who turned over Defendant's jacket and all of its contents to them.

The agents then commenced a search of the jar. It is not clear from the record where the search took place, but apparently it happened in the vicinity of the hospital; possibly out of the trunk of Spencer's cruiser, parked near the emergency room. Hutchings removed the opaque plastic bag from the jar. The plastic bag was tied shut, and Hutchings untied it. Inside of the dark-colored plastic bag he found three transparent plastic bags, one containing white powder and two containing a brownish rock-like substance. Leonard performed a field test on the substances, and determined that they were cocaine and methamphetamine. Subsequent tests confirmed that the white powder was approximately 40.8 grams of cocaine and that the brownish rock-like substance was approximately 56.3 grams of methamphetamine.

The parties have stipulated that from July 14th to July 16th, Defendant remained unconscious in a hospital bed. He suffered a head wound, but no fractured bones or paralysis. On July 17th and thereafter, he was conscious. Other

than that, it is not clear to the Court what happened between July 14th and July 19th. It is not clear if and when Defendant regained mobility. There is no evidence that Defendant was placed under guard prior to July 19th, 2000, the day that the United States filed a criminal complaint against Defendant, at which time the Magistrate Judge ordered the United States Marshal to hold Defendant in custody pending his detention hearing.[1] It is not clear when he was taken from the hospital to the Penobscot County Jail, where he currently awaits trial.

Hashey testified that he caused to be served upon Defendant certain citations for criminal offenses more than one week, possibly more than two weeks, after the accident. It was not made clear, however, to what those citations pertained, but the implication is that they related to eluding a police officer and possession of marijuana.

The Bangor Police Department has a written policy instructing its officers on how to treat property and evidence that they find. A provision of the policy states that

> I. POLICY
> It is the policy of the department that all evidence and property recovered or turned into this agency be properly packaged, handled, recorded, stored, and accounted for.
> II. PURPOSE
> The purpose of this order is to establish a lawful system for the safe and efficient storage and retrieval of evidence or other valuable items that enter the custody of this department.
> All personnel shall maintain strict accountability for all property held as property and evidence.

[1] Defense counsel has suggested that between July 14th and July 19th, Defendant was not under guard while he was at the hospital. Hashey, however, testified that he had been told that the United States Marshals Service was guarding Defendant while he was at the hospital. See, e.g., Fed. R. Evid. 104(a); United States v. Matlock, 415 U.S. 164, 172-75 (1974) (hearsay evidence should not be excluded at suppression hearings). Hashey, however, did not testify as to when Marshals began to guard Hawkins, or any other details. Therefore, the Court finds that Hashey's testimony is insufficient to establish that law enforcement officers were guarding Defendant prior to July 19th.

(Department General Order, Government Ex. 2 §§ I, II). Another provision of this policy reads

> 1. The recovering officer will be responsible to properly package and label all items collected or recovered as property or evidence, to prevent any tampering, contamination, or destruction of same.
> 2. Upon return to the police department, the recovering officer shall immediately list and describe all items recovered on a property and evidence form….
> 3. All property and evidence and all related property and evidence forms (except those articles which may be sent to the lab) must be delivered immediately to the property locker.
> 4. Reporting officers should, when possible, check all property against NCIC or local stolen property reports.
> 5. For property that may be lawfully released to the owner, the recovering officer shall immediately attempt to notify the owner (by telephone or letter) that the department is holding their [sic] property and make arrangements for the return of the property.

(Department General Order, Government Ex. 2 § III(A)).

Similarly, the MDEA has a policy regarding how to treat property and evidence that agents acquire. A portion of the policy reads

> 4. Reporting
> a. Circumstances surrounding the acquisition of any Non-Drug evidence/property will be fully reported, including purchases, criminal and civil seizures and abandoned property.
> (1) A receipt will always be issued for property seized.
> (2) A document for introducing the item into property control.
> b. Except in extenuating circumstances, the agent that acquires the property will prepare a MDEA Form #110 (Continuity of Evidence).
> (1) Item number, a sufficiently detailed description of the item, date, signature and purpose of change in custody will document all transfers on the form.
> (2) The form will always stay with the evidence.

(Maine Drug Enforcement Agency General Order, Government Ex. 1 § II(B)(4).)

Another section reads

> 11. Articles Taken for Safekeeping
> a. In some situations, property may be taken for safekeeping.

b. To avoid excessive processing, alternate means of securing should be explored.
c. All property taken must be inventoried, itemized and a receipt issued.
d. If the case agent takes the property into custody, it must be documented as previously described.
(1) The case agent must return such property to the rightful owner with all proper forms completed.

(Maine Drug Enforcement Agency General Order, Government Ex. 1 § II(B)(11).)

Agent Leonard filled out by hand an MDEA inventory form, listing everything that the MDEA took possession of in reference to Defendant. The list includes:

1. Glass jar containing two plastic bags white substance [sic]
2. $18.00 food stamps
3. Digital scales
4. Polaris jacket (cut by ambulance crew)
5. Gold chain
6. .58¢ change and bic lighter
7. Miscellaneous papers
8. 2 Knives
9. Keychain (black) & lighter
10. Gucci watch
11. Black glove
12. Leather belt
13. .78¢ change
14. $84.00 cash from wallet, miscell. papers

(MDEA Form 110 Case No. 00-6389-C, Government Ex. 3.) Elsewhere on the form, Leonard noted that certain items would be kept for "safekeeping" and that others would be returned to their owner. The form does not make clear whether the listed items were removed from Defendant's jacket, his person, or from another piece of clothing.

Agent Hutchings also testified that under both the Bangor Police Department's policy and the MDEA's policy, it is understood that officers should remove all contents from a container when inventorying that container. As an example, Hutchings explained that if he came into contact with a misplaced jacket, "the jacket and its contents within in

would be logged and labeled and placed into evidence for either safekeeping or for … court preparation or for analysis." (Tr. 52 ll. 4-6.) Based on this undisputed testimony, the Court makes a finding of fact that both the Bangor Police Department and the MDEA feature an unwritten addendum to their written policies, compelling officers to open containers to determine their contents when conducting an inventory.

II. DISCUSSION

Pursuant to the Fourth Amendment, the general rule is that law enforcement officers must obtain a warrant to search a person or a place. Numerous exceptions, however, permit police officers to conduct a search without a warrant. See, e.g., United States v. Ross, 456 U.S. 798, 825 (1982) (the Fourth Amendment is "'subject only to a few specifically established and well-delineated exceptions.'") (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). The United States argues that the search of the peanut butter jar was valid because the search fell within three of those exceptions: (1) it was a search incident to arrest, (2) it was a search pursuant to a legitimate inventory policy, and (3) the police inevitably would have discovered the contents of the jar.

A. Search Incident to Arrest

If the police have probable cause to arrest an individual, the police may arrest that person without a warrant. See, e.g., New York v. Belton, 453 U.S. 454, 460 (1981). If the police arrest someone, they may search that person and anything on her person, such as a purse. See, e.g., Curd v. City Court, 141 F.3d 839, 842 (8th Cir. 1998). This rule evolved from cases that justified searches of arrested suspects for two key reasons: (1) to

disarm arrestees to ensure the safety of the police, and (2) to prevent arrestees from destroying or concealing any evidence of criminal activity on their persons. See, e.g., Chimel v. California, 395 U.S. 752, 763 (1969). In United States v. Robinson, 414 U.S. 218 (1973), the Supreme Court established a bright-line rule: so long as the police legally arrest a person, the police may fully search that person without specifically justifying that the purpose of the search was to promote safety or to preserve evidence. See id. at 235. In the present case, Defendant argues that he was never placed under arrest, so the police had no authority to search him incident to arrest.

1. Whether the Police Arrested Defendant

The United States argues that the police arrested Defendant, but the Court is hard-pressed to perceive an actual arrest. The United States Supreme Court has reiterated that "[a] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." California v. Hodari D., 499 U.S. 621, 627-28 (1991) (internal quotations omitted). "[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

The case law, however, does not illustrate how this standard applies to those allegedly arrested while unconscious. After all, a reasonable unconscious person would have no capacity to believe or disbelieve whether she was free to depart. A reasonable conscious person, however, would have perceived no indicia of an arrest.

Officer Hashey did not address Defendant's motionless form by declaring "You are under arrest," nor did he inform Defendant of his Miranda rights. Chasing Defendant did not suffice as an arrest. See Hodari, 499 U.S. at 629 (holding that chasing suspects did not amount to a seizure). Hashey did not handcuff Defendant, and indeed it probably would have been a disservice to the paramedics if he had tried to do so.

The record shows two instances of physical contact between the police officer and Defendant: when Hashey immobilized Defendant's neck by placing a collar on him, and when Hashey removed the bag of marijuana from his leg. In Hodari, the Supreme Court discusses that a slight amount of physical contact between police and suspect will satisfy the requirements of an arrest when the purpose of the contact is to restrain movement. See Hodari, 499 U.S. at 626. Here, the police officer touched Defendant to render him medical aid and to acquire evidence. There is no suggestion that Hashey touched Defendant in a manner meant to detain him. Instead, Hashey testified that he suspected Defendant probably would perish.

Moreover, Hashey acquiesced to the paramedics spiriting Defendant away to the hospital without police escort. Being in the custody of paramedics is not the equivalent of being in police custody. See Wilson v. Coon, 808 F.2d 688, 690 (8th Cir. 1987) (finding that defendant was not in police custody for Miranda purposes when police officer questioned defendant while paramedics were restraining and treating him). Upon arrival at the hospital, Defendant was placed within the vicinity of Officer Spencer. Spencer, however, never touched Defendant nor performed any other action indicative of arresting him. Moreover, Spencer acknowledged that he did not arrest Defendant. Rather, he presumed that someone else must have arrested Defendant.

Following these events, the record shows nothing demonstrating an actual arrest of Defendant until July 19, 2000, the day that the Magistrate Judge ordered the United States Marshals Service to take custody of him. There is no evidence that a criminal complaint was filed against Defendant in the interim. There is no evidence that law enforcement coordinated with hospital staff to ensure that they understood Defendant was under arrest, that they should not be permit him to leave, or that they should notify police if Defendant regained consciousness. From July 14th to July 19th, there is no evidence suggesting Defendant was under arrest.

This is the case despite the fact that Defendant was conscious as of July 17th. Medical reports presented to the Court indicate that Defendant suffered a head wound possibly resulting in some minor brain damage, but that otherwise he did not have any broken bones or paralysis. A nurse's report dated July 17th states that Defendant obeyed the nurse's commands, that he was able to move all of his extremities, that his vital signs were stable, and that even though he was sleepy, he was alert and oriented when awake. Furthermore, a doctor's report dated July 17th states that although Defendant suffered from pain in his neck and head, he was eating normally, and that "the patient has legal issues pending against him secondary to trying to evade police in a high-speed chase. The patient has a high risk of leaving in a clandestine manner as his mobility improves." (Rehabilitation Consultation Report, Defense Ex. 1, at 3.) Therefore, even though Defendant was possibly brain damaged, lethargic and still aching, it may have been possible for him to have walked out of the Eastern Maine Medical Center from July 17th to July 19th.

All that being said, it may seem a logical fallacy to apply a reasonable conscious person standard when Defendant was indeed unconscious. Hashey testified that if Defendant had been conscious, he would have arrested him for eluding a police officer or for possession of marijuana.[2] A police officer's subjective intent, however, is irrelevant when determining whether an arrest occurred. See, e.g., United States v. Mendenhall, 446 U.S. 544, 554 n.6 (1980) ("We agree with the District Court that the subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent."). Furthermore, the Court perceives no federal case law suggesting that the standard for arrest is different when the suspect is unconscious. Therefore, the Court concludes that it has no alternative but to apply the reasonable conscious person standard. Because a conscious person in Defendant's position would not have perceived any indicia of an arrest, the Court finds that the police did not arrest Defendant on July 14, 2000.

2. Whether a Formal Arrest Was Necessary

In the alternative, the United States argues that to justify a valid warrantless search incident to arrest, a formal arrest is not necessary. Rather, the Government argues, the Court should be able to apply the search incident to arrest exception to the Fourth Amendment warrant requirement because Officer Hashey had probable cause to arrest Defendant. The Government is correct that there is ample case law allowing courts to prevaricate on the search incident to arrest rule.

[2] Defendant does not argue that it was improper for Officer Hashey to chase him, nor does Defendant argue that it was improper for Hashey to have seized the bag of marijuana.

For instance, if a police officer has probable cause to arrest someone, searches that person without a warrant, and immediately thereafter actually arrests that person, that search is still valid as a search incident to arrest. See, e.g., Rawlings v. Kentucky, 448 U.S. 98, 111 (1980); United States v. Bizier, 111 F.3d 214, 217 (1st Cir. 1997). The Government argues that such a situation is analogous to the present case because Hashey had probable cause to arrest Defendant. This rule, however, only applies when "the *formal arrest* followed quickly on the heels of the challenged search…." Rawlings, 448 U.S. at 111 (emphasis added). As discussed above, there is no evidence that anyone arrested Defendant before, or soon after, the search of the peanut butter jar.

The Government also cites United States v. Edwards, 415 U.S. 800 (1974), wherein the Supreme Court upheld the search of an arrestee's clothing the morning after his arrest. See id. at 807. In Edwards, the police arrested the defendant at 11 p.m. and placed him in a jail cell. See id. at 801. The next morning, they ordered him to hand over his clothing, which was dusted with paint chips that served as evidence against him. See id. at 802. The defendant tried to argue that the search was invalid because it occurred six hours after his arrest. See id. at 804. Disagreeing with his argument, the Court found that subsequent to the defendant's arrest and incarceration, he and everything on his person were in police custody and subject to search. See id. at 807. The present case is easily distinguishable from Edwards, which involved an actual arrest immediately followed by imprisonment. As discussed above, the within case features a glaring lack of arrest followed by a hospital stay. Thus, the Court finds Edwards inapposite.

In Vauss v. United States, 370 F.2d 250 (D.C. Cir. 1966), the court affirmed a conviction based on evidence found while police were searching an unconscious man's clothing. See id. at 251-52. In Vauss, police officers stumbled upon the defendant, who was lying unconscious on a public street. Unable to rouse the man, the police called for an ambulance. See id. As they waited for the ambulance to arrive, one of the officers searched the defendant's person in hopes of finding identification, something indicating why he was unconscious, or documents revealing his medical history. See id. The opinion suggests that this search may have been justified as a search incident to arrest, but this Court reads Vauss as permitting a warrantless search because of a medical emergency. See id.; see also Tracy A. Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R.5th 52 (1993) (listing opinions suppressing evidence when police searched an injured person when medical personnel already were treating her and police were not acting to preserve her health). Similar exigencies were not present in the within case: not only did Hashey recognize Defendant, but also it was perfectly clear what had rendered him unconscious. The police did not search Defendant to determine his medical history or to help save his life. Therefore, Vauss and other medical emergency cases have no bearing on the instant case.

Another opinion bending the rule of search incident to arrest is United States v. Harvey, 701 F.2d 800 (9th Cir. 1983), overruled by United States v. Chapel, 55 F.3d 1416 (9th Cir. 1995). Harvey held that the police may take blood samples from unconscious persons suspected of driving under the influence of alcohol without arresting them. See Harvey, 701 F.2d at 805-06. Harvey, however, relied heavily on the fact that when

someone is arrested for committing vehicular manslaughter while intoxicated, the alcohol content in her blood is a vital piece of evidence that will vanish quickly from the bloodstream. See id. at 803. A peanut butter jar, however, is nothing like the "evanescent nature of blood alcohol levels…." See id. Therefore, not only was Harvey overruled, but also it is not directly on point.

Nonetheless, the Government relies on a portion of Harvey's discussion stating that because one of the defendants was so drunk that he was delirious and non-communicative, there was "no compelling reason why a prior arrest is necessary when it is shown that the suspect could not appreciate the significance of such action." Id. at 805-06. This Court, however, is not convinced by this cursory dismissal of the necessity of an arrest.

Furthermore, the proposition that a search incident to arrest relies on an actual arrest is supported by the recent case of Knowles v. Iowa, 525 U.S. 113 (1998), where the Supreme Court held that police officers are not entitled to search incident to the issuance of a citation. See id. at 118-19. The statutory law of Iowa authorizes law enforcement officers to arrest or issue citations to those violating the state's traffic laws, such as by exceeding the speed limit. See Iowa Code Ann. §§ 321.285; 321.482; 321.485(1)(a). The Iowa Supreme Court had interpreted these statutes to permit officers to conduct a complete search of an automobile pursuant to a citation because such a search was analogous to a search incident to arrest and because police could arrest persons stopped for speeding. See State v. Meyer, 543 N.W.2d 876, 879 (Iowa 1996). In Knowles, a police officer pulled over the defendant for speeding and issued him a citation. See Knowles, 525 U.S. at 114. Then, the police officer conducted a full search of defendant's

car, during which he discovered narcotics. See id. The United States Supreme Court held that it violated the Fourth Amendment for the government of Iowa to authorize its police officers to search citizens based on a citation, rather than an arrest. See id. at 118-19. The fact that the police officer could have arrested the defendant for speeding did not persuade the Court that the search was valid. See id.; see also United States v. Trueber, No. 00-1016, 00-1710, 2001 U.S. App. LEXIS 1272, at *35 (1st Cir. Jan. 30, 2001) (finding no arrest even though police officers were entitled to arrest defendant and they probably intended to do so).[3]

Knowles goes on to explain that the search incident to arrest exception is a "bright-line rule." See id. The benefit of a bright-line rule is that it readily provides a solution when similar, recurring fact patterns arise. The holding in Knowles, however, implies that when a situation occurs that does not fit within the usual contours of a bright-line rule, courts cannot rely on the simple mechanics of that rule. See id. ("Here we are asked to extend that 'bright-line rule' to a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all. We decline to do so."). Instead, when a situation similar to an arrest arises, courts should determine whether the interests of police safety and the preservation of evidence support a warrantless search. In the present case, Defendant was unconscious, so there was no opportunity for him to harm the police or to destroy or conceal any evidence. See, e.g., Robinson, 414 U.S. at 234. Because the present case does not feature an actual arrest, and because the two purposes behind the search incident

[3] Presently, the Supreme Court has granted certiorari on a case challenging the authority of police to arrest persons for violating simple misdemeanors that carry penalties no greater than imposition of a fine. See Atwater v. City of Lago Vista, 195 F.3d 242, cert. granted, 120 S. Ct. 2715 (2000).

to arrest rule do not apply, the Court maintains that the search did not constitute a valid search incident to arrest.

B. Inventory Search

As an alternative argument, the Government contends that the police lawfully searched the contents of Defendant's jacket and jar pursuant to an inventory search. See, e.g., Colorado v. Bertine, 479 U.S. 367, 371-76 (1987). A warrantless search is permitted under the Fourth Amendment if it is carried out pursuant to a standardized inventory policy that has been designed to further the police's community caretaker function. See, e.g., Illinois v. Lafayette, 462 U.S. 640, 647-48 (1983). A policy that serves a community caretaker function operates to secure property against theft and vandalism and to protect the police and others from harm. See, e.g., id. Furthermore, as long as law enforcement officers conduct a search according to their inventory policy, it does not invalidate the search if the subjective intent of those officers is to find evidence rather than to safeguard property. See, e.g., Bertine at 373.

As a preliminary matter, it was completely reasonable for the paramedic, Fish, to convey Defendant's jacket to Officer Spencer. A medical professional working to save Defendant's life, Fish acted reasonably when he removed Defendant's gas-soaked clothing. Cognizant that Defendant had eluded the police, had been armed with knives and possibly had possessed illicit narcotics, Fish used sound judgment when he gave the disputed article of clothing to the police. Fish gave Spencer the jacket not at the direction of the police, but because Fish believed it was prudent to entrust Defendant's possessions with government agents. See, e.g., United States v. Jacobsen, 466 U.S. 109, 114-15

(1984) (holding that there is no Fourth Amendment violation when private parcel carriers conveyed suspicious package to law enforcement); United States v. Winbush, 428 F.2d 357, 358-59 (6th Cir. 1970) (finding no Fourth Amendment violation when hospital employee examined unconscious defendant's clothing then handed over suspicious items to the police). It does not alter the Court's reasoning that Fish worked as an employee of the government of Old Town, as a paramedic within its Fire Department. See, e.g., Michigan v. Tyler, 436 U.S. 499, 509 (1978) (holding that firefighters need a warrant to search a premises for evidence of arson, but noting that it is permissible for firefighters to seize evidence that is in plain view without a warrant while they are carrying out their emergency response duties); State v. McWatters, 822 P.2d 787, 789 (Wash. Ct. App. 1992) (affirming denial of motion to suppress when paramedic working for municipal government cut open injured defendant's clothing, found suspicious items, then handed them over to nearby police officer). Thus, the Court finds that Spencer legitimately came into possession of Defendant's belongings.

Once the jacket and jar were in Spencer's possession, his subsequent search was valid as long as (1) the Bangor Police Department's inventory policy was legitimate, and (2) Spencer acted in accordance with that policy. See, e.g., South Dakota v. Opperman, 428 U.S. 364, 373-76 (1976). Regarding the first question, the policy passes muster if it has the purpose of producing an inventory "to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Florida v. Wells, 495 U.S. 1, 4 (1990). Also, the policy must feature "standardized criteria" or "established routine" so that the policy does not grant officers "so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime.'" Id. (quoting

Bertine, 479 U.S. at 376). At the same time, "[t]here is no requirement that the officers must select the least intrusive way of fulfilling their community caretaking responsibilities." United States v. Rodriguez-Morales, 929 F.2d 780, 786 (1st Cir. 1991). The Bangor Police Department's written inventory policy specifically authorizes officers to package and label all items to prevent any "tampering, contamination, or destruction…." It requires officers to maintain strict accountability for all recovered property and to list all items on a form. The policy establishes a routine that when officers recover property they must, among other things, list all items on a form, place all property in a locker and attempt to notify the rightful owner. Also, the Bangor Police Department policy embraces an unwritten rule that to inventory a container, an officer should open that container and take inventory of all of its contents.

Defendant argues that a policy to open closed containers while conducting an inventory search must be in writing. The case law, however, permits police departments to rely on unwritten policies authorizing the opening of containers. See United States v. Infante-Ruiz, 13 F.3d 498, 503 (1st Cir. 1994) (suggesting that an oral policy to search all containers would support a warrantless inventory search) (citing United States v. Mancera-Londono, 912 F.2d 373, 375-77 (9th Cir. 1990) (upholding inventory search of two suitcases based on oral policy to open all containers)); see also United States v. Agofsky, 20 F.3d 866, 872-73 (8th Cir. 1994) (holding that an oral policy is sufficient to support warrantless inventory searches); United States v. Kordosky, 921 F.2d 722, 723-24 (7th Cir. 1991) (same); United States v. Frank, 864 F.2d 992, 1004 (3rd Cir. 1988) (same). According to the written policy and oral testimony, the policy serves a community caretaking function designed to protect property from harm and it features

standardized criteria and an established routine. Therefore, the Court finds that the Bangor Police Department's inventory policy – both the written and unwritten portions – is reasonable under the Fourth Amendment.

When Officer Spencer searched the contents of the jacket, he complied with Bangor's unwritten inventory policy. The Bangor policy does not mandate that searches take place at the police station, and the Court finds nothing unreasonable in Spencer looking inside the jacket's pockets while he was still at the hospital. Spencer, however, may have deviated from the policy by not filling out an evidence and property form. The Bangor policy requires Spencer to fill out a form "[u]pon return to the police department," but he never returned to the police station with any items with him because he conveyed Defendant's possessions to Hutchings and Leonard at the hospital. Spencer left it to them to complete the inventorying of Defendant's belongings. The Bangor policy is silent as to whether officers may release recovered property to another law enforcement entity.

In United States v. Haro-Salcedo, 107 F.3d 769 (10th Cir. 1997), the Tenth Circuit found that it was not a valid inventory search when a federal agent searched a car stopped by local police. See id. at 773. In Haro-Salcedo, Salt Lake City police officers lawfully pulled over an automobile which they intended to impound, and which they were justified to impound. See id. at 770-72. A federal Drug Enforcement Agency ("DEA") agent arrived on the scene and performed a search of the car prior to impoundment. See id. at 771-72. In finding that this did not constitute a legitimate inventory search, the court relied on two important facts: that the DEA agent was not familiar with the Salt Lake

City Police Department's inventory policy, and that the agent never filled out an inventory form. See id. at 773.

In the within case, Hutchings, who was both a Bangor police officer and an MDEA agent, testified as to knowing the inventory policies of both law enforcement agencies. Moreover, Leonard completed a form inventorying the contents of the jacket and jar. Because Hutchings was a Bangor police officer familiar with its inventory policy and because Leonard completed an inventory form, the Court finds that this case is distinguishable from Haro-Salcedo and concludes that there was no error in Spencer allowing the MDEA agents to conduct an inventory search. See id.

Next, the Court must consider whether Hutchings and Leonard acted in compliance with the MDEA policy and whether that policy is constitutionally valid. First, the Court finds that the MDEA's inventory policy serves a community caretaker function by securing articles for safekeeping. Moreover, the policy features standardized criteria such as rules requiring agents to fill out forms, to itemize all property, to place items in storage, and to return property to its rightful owner. Therefore, the Court finds that the MDEA inventory policy is constitutionally valid. See, e.g., Wells, 495 U.S. at 4. By filling out an inventory form, Leonard complied with the inventory policy. Nothing in the policy restricts agents from conducting inventory searches in the field. As discussed above, the MDEA policy includes a valid oral addendum instructing agents to open sealed containers to inventory their contents. See, e.g., Mancera-Londono, 912 F.2d at 375-77. Thus, the MDEA agents conducted an inventory search pursuant to the MDEA inventory policy. Therefore, the Court finds that the police were conducting a

constitutional inventory search when they discovered the illicit contents of the peanut butter jar.

C. Inevitable Discovery

As another alternative, the Government argues that the jar's contents would have been legally found pursuant to the inevitable discovery doctrine. Because the Court finds that the illicit narcotics were found pursuant to a valid inventory search, the Court declines to consider the inevitable discovery argument.

III. CONCLUSION

For the foregoing reasons, the Court DENIES Defendant's Motion to Suppress.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 6th day of February, 2001.

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aka
DARREN WOOD
aka
DARREN ALLEN
defendant

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